

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROSS DANIEL WALKER,

Plaintiff,

– against –

KINGS COUNTY HOSPITAL,

Defendant.

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: **MEMORANDUM DECISION AND
ORDER**

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: 22-CV-2370 (AMD) (LB)

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ANN M. DONNELLY, United States District Judge:

On April 21, 2022, the *pro se* plaintiff, a New York resident, sued the defendant, a New York business, for “medical malpractice and harassment.” (ECF No. 1 at 5.) The plaintiff maintains that this Court has diversity jurisdiction over the case. (*Id.* at 2, 4.)

The Court grants the plaintiff’s request to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915 solely for the purpose of this order. However, for the reasons set forth below, the plaintiff’s action is dismissed with leave to amend because the Court lacks subject matter jurisdiction.

LEGAL STANDARD

In order to survive a motion to dismiss, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Matson v. Bd. of Educ.*, 631 F.3d 57, 63 (2d Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)) (internal quotation marks omitted). While “detailed factual allegations” are not required,

“[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

The plaintiff is proceeding *pro se*, so I construe his complaint liberally, and evaluate it by “less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); *see also Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009); *Hayden v. Paterson*, 594 F.3d 150, 160 (2d Cir. 2010). Nevertheless, I must dismiss *sua sponte* an *in forma pauperis* action if it “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

DISCUSSION

Federal courts have jurisdiction only when a case presents a “federal question,” or when plaintiffs and defendants are citizens of different states—“diverse in citizenship” in other words—and the amount in controversy exceeds \$75,000. 28 U.S.C. §§ 1331, 1332. “Federal question jurisdiction may be properly invoked only if the plaintiff’s complaint necessarily draws into question the interpretation or application of federal law.” *New York v. White*, 528 F.2d 336, 338 (2d Cir. 1975). “Failure of subject matter jurisdiction is not waivable and may be raised at any time by a party or by the court *sua sponte*. If subject matter jurisdiction is lacking, the action must be dismissed.” *Lyndonville Sav. Bank & Tr. Co. v. Lussier*, 211 F.3d 697, 700-01 (2d Cir. 2000); *see* Fed. R. Civ. P. 12(h)(3).

The Court does not have diversity jurisdiction over this case because the plaintiff and the defendant are New York residents. *See Herrick Co. v. SCS Commc’ns, Inc.*, 251 F.3d 315, 325 (2d Cir. 2001) (explaining that the federal statute conferring diversity jurisdiction requires complete diversity).

CONCLUSION

For the reasons set forth above, the complaint is dismissed without prejudice for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3). The plaintiff may file an amended complaint within 30 days of the date of this order. The amended complaint must bear the caption, “Amended Complaint,” and have the same docket number as this order (“22-CV-2370”). If the plaintiff does not file an amended complaint within that time, then judgment dismissing this action will enter.

The Clerk of Court is respectfully directed to mail a copy of this order to the plaintiff and to note the mailing on the docket. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Notably, the plaintiff has filed seven cases in this Court in less than a month. *See Walker v. Child Protective Servs.*, No. 22-CV-2132 (E.D.N.Y. Apr. 19, 2022) (transferred to the Eastern District of California); *Walker v. Brookdale Plaza*, No. 22-CV-2133 (E.D.N.Y. Apr. 20, 2022) (dismissed with leave to amend); *Walker v. TransUnion*, No. 22-CV-2246 (E.D.N.Y. Apr. 18, 2022); *Walker v. Jack in the Box*, No. 22-CV-2369 (E.D.N.Y. Apr. 21, 2022); *Walker v. Kings County Hosp.*, No. 22-CV-2370 (filed Apr. 21, 2022); *Walker v. Carter*, No. 22-CV-2371 (E.D.N.Y. Apr. 21, 2022); *Walker v. Tulare County*, No. 22-CV-2372 (E.D.N.Y. Apr. 21, 2022). The plaintiff is cautioned that this Court will not tolerate abuse of its judicial resources or frivolous litigation and that he may be subject to a filing injunction in this district if he continues to file similar actions. *See Lau v. Meddaugh*, 229 F.3d 121, 123 (2d Cir. 2000).

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
May 16, 2022